

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8013 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

BHARATBHAI POPATBHAI PATWA

Versus

COMMISSIONER OF POLICE

Appearance:

MS.SUMAN PAHWA FOR MR MJ DAGLI for Petitioner
MR ND GOHIL, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/03/99

ORAL JUDGEMENT

The petitioner through this petition under Article 226 of the Constitution of India has challenged the detention order dated 5.8.1998 passed by the Police Commissioner, Ahmedabad under section 3(2) of the Prevention of Antisocial Activities Act,1985 (for short

'PASA) and has prayed that the aforesaid order be quashed and he be released from illegal detention forthwith.

From the grounds of detention it appears that from one registered offence under Bombay Prohibition Act as well as from the statements of two confidential witnesses the Detaining Authority was satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. The Detaining Authority was also aware that in connection with registered offence under Bombay Prohibition Act, the petitioner was in custody and that in case he is released on bail, he may continue in his illegal bootlegging activities. Alternative remedies in the nature of efficacious remedies were also considered by the Detaining Authority and finding alternative remedies inefficacious the impugned detention order was passed. The detention order has been challenged on the only ground that the activities of the petitioner cannot be said to have created situation prejudicial for maintenance of public order. It has been argued that neither the registered offence nor the statements of two confidential witnesses indicate that situation prejudicial for maintenance of public order was created by the petitioner and as such his detention under PASA is illegal. As against this, learned Assistant Government Pleader contended that keeping in view, recovery of huge quantity of foreign liquor and beer contained in 152 bottles worth Rs.27,250/- it can be said that the petitioner is a bootlegger and he is involved in such activities, and recovery of huge quantity of foreign liquor itself shows that his activities were prejudicial for maintenance of public order in as much as on previous occasion also hooch tragedy occurred on account of consumption of such liquor.

Subjective satisfaction of the Detaining Authority that the petitioner is a bootlegger hardly requires any interference because there was sufficient material before the Detaining Authority in the nature of one registered offence under Bombay Prohibition Act and statements of two confidential witnesses disclosing participation of the petitioner in bootlegging activities. Thus, the petitioner was rightly declared as bootlegger within meaning of section 2(b) of the PASA.

A bootlegger however, can be detained under PASA only if his activities are found prejudicial for maintenance of public order. If the activities of the petitioner are covered under law and order problem then certainly his detention under PASA would not be

justified.

So far as the registered offence is concerned, only one case was registered against the petitioner under Bombay Prohibition Act. Recovery of 152 bottles of foreign liquor cannot be material from which it can be inferred that the activities were prejudicial for maintenance of public order.

After being found in possession of 152 bottles of foreign liquor the petitioner was booked under the ordinary law and he could not be enlarged on bail till the detention order was passed. There is no indication from the grounds of detention that at the time of arrest the petitioner created situation which could be termed as prejudicial for maintenance of public order. Thus, the solitary offence under Bombay Prohibition Act registered against the petitioner could not furnish material to the Detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order.

The next material on this point is the statements of two confidential witnesses which can be divided into two parts. The first part contains exchange of words between the petitioner and the witness and the second part consist of the activities of the petitioner and his companions towards mob which collected at the spot. So far as the second part is concerned, there is nothing in the grounds of detention to show that any member of the crowd was either beaten or injured by sharpened edged weapon which was in possession of the petitioner and his companions. If sharpened edged weapons were shown towards mob, it can hardly be said that the situation prejudicial for maintenance of public order arose on those two occasions. Disturbance of public order even within the extended meaning of public order as contained in explanation to sub-section (4) of section 3 of PASA also could not have been created.

So far as the incidents between petitioner and the two witnesses are concerned, the first witness stated that the petitioner suspected that he was police informer and passing information against the petitioner to the police. The petitioner and his companions had shown knife to the witness and threatened him as a result of which he raised alarm whereupon people from nearby locality gathered. The witness did not state that he was beaten even by kicks and fists. He has also not stated that he received injury from sharpened edged weapon either from the petitioner or from his companions. Thus, mere showing knife to the witness cannot be said to have

created sense of alarm and insecurity of such a nature which can be said to be the circumstance prejudicial for maintenance of public order even within the ambit of explanation to sub-section (4) of section 3 of PASA.

The second witness stated that he was beaten and knife was touched on his person. Corresponding injury has not been disclosed. At the most this can be stated as incident between witness and petitioner and this minor incident of beating with no serious or grave injury can hardly be said to have created situation prejudicial for maintenance of public order. At the most it was situation prejudicial for maintenance of law and order but since the witness did not approach the police no case could be registered against the petitioner.

There is no other material on record from which it can be said that the activities of the petitioner were prejudicial for maintenance of public order.

If the activities of the petitioner were not prejudicial for maintenance of public order his detention under PASA has been rendered illegal. The detention order, therefore, cannot be sustained. It has therefore to be quashed.

The writ petition therefore succeeds and is allowed. The detention order dated 5.8.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt